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January 17, 1996

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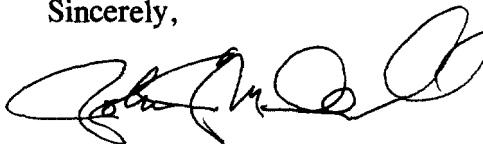
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex Parte Submission -- Location And Monitoring Service
Rules PR Docket 93-61

Dear Mr. Caton:

The undersigned represents MobileVision, L.P., and on its behalf and that of the other members of the coalition of multilateration LMS licensees, is filing the original and one copy of the attached written ex parte communication pursuant to Section 1.1206(a)(2) of the Commission's Rules.

Sincerely,



John J. McDonnell

JJM:jdc
Attachments
cc: Service List

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22 December, 1995

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Location and Monitoring Services Rules PR Docket 93-61

The Commission issued the *Report and Order* defining the new rules for Location and Monitoring Services in February, 1995. The Commission then collected Comments and Reply Comments from interested petitioners under the schedule normally required by its procedural rules. Had the Commission maintained the schedule implied by its past practices and procedural rules, the Commission would have issued the Final Rules for Location and Monitoring Services in June, 1995. The Commission did not issue the Final Rules in June, but indicated to multilateration LMS licensees that at least an important subset of the Final Rules would be issued by September, 1995. As of this date, a full six months beyond the presumed June, 1995 target date, no subset of the Final Rules has been issued and no clarification of the original *Report and Order*, as requested by several multilateration LMS licensees, has been issued by the Commission.

The Commission's delay in issuing the Final Rules for Location and Monitoring Services is now causing an undue burden on multilateration LMS licensees, and is impairing the capability of these companies to build and operate their businesses, to prepare to grandfather their existing multilateration licenses, to participate in upcoming auctions for additional multilateration LMS licenses, and to attract investment capital needed to accomplish these objectives. The absence of the Final Rules for Location and Monitoring Services, and the lack of the necessary clarification of the *Report and Order*, is critically impacting the businesses of the multilateration LMS licensees. In particular, the multilateration LMS licensees have been proceeding with a wide range of activities to prepare to grandfather their existing licenses. These companies have undertaken considerable expense and effort, and have acted in good faith to comply with the Commission's rules for grandfathering their existing licenses. The Commission's delay in issuing the Final Rules, however, has now compromised the ability of these companies to grandfather their existing licenses by the Commission's original deadline of April 1, 1996, because the licensees have not been able to commit to equipment production or to leases on available and appropriate sites. In continuing to delay in issuing the Final Rules and clarifications, the Commission is needlessly and capriciously imperiling the ability of these companies to grandfather their existing multilateration LMS licenses as the Commission had originally intended in its *Report and Order* last February.

If grandfathered licensees are prevented through excessively restrictive deployment requirements from building systems that are commercially viable, the LMS auctions and perhaps the LMS industry itself may be severely damaged or destroyed altogether. By all meaningful measures, the current LMS operators represent the entire LMS industry and the only holders of developed LMS technology. They are the only companies with systems and experience that can be quickly applied to this new service. As such, they and any partners they assemble, will be the most likely and most aggressive auction participants. If even they, however, with the advantage of their grandfathered licenses are unable to achieve satisfactory market acceptance, it is unreasonable to expect either they or unidentified newcomers to bid aggressively for the right to provide this unproven service. All other successful spectrum auctions held to date have been for services with proven value and readily

available technology. Successfully deployed and operating grandfathered systems can give this same advantage to the LMS auctions.

In August, 1995, the LMS community submitted a jointly prepared statement to the Commission highlighting its concerns about the impact of the delay and suggesting practical remedies. As the delay grows longer, its deleterious impact has become vastly more acute and the remedies previously suggested are no longer adequate. Hence, the multilateration LMS licensees who intend to grandfather their existing licenses are once again united in petitioning the Commission to issue its Final Rules in Docket 93-61 as soon as possible, to specifically address a number of new and previously raised issues which must be resolved for the existing licensees to move forward, and to incorporate in those Final Rules the appropriate measures to undo the adverse effects of the Commission's unforeseen delay in issuing the Final Rules.

This coalition of multilateration LMS licensees emphasizes to the Commission the pressing business necessity to issue Final Rules soon and to preserve in those Final Rules the Commission's original intent to permit multilateration LMS licensees to grandfather their existing licenses. Specifically, the coalition of multilateration LMS licensees asks the Commission to quickly move to relax the emission mask requirement, issue LMS licenses refiled under the new rules, relax the restrictions on relocating grandfathered sites and adding new sites, extend the deadline for grandfathering sites and for LMS equipment certification, issue procedures and schedules for LMS auctions, and clarify and correct the standards and procedures for identifying co-channel interference with Part 15 devices.

Emission Mask

The emission mask originally specified in the *Report and Order* was unnecessarily restrictive and placed an unnecessary hardship on multilateration LMS network operators. This emission mask is a sharp departure from customary specifications by the Commission, and is unnecessary to protect other users within the ISM band and in adjoining bands. The inappropriateness of the originally specified emission mask has been explained to the Commission in several *ex parte* presentations and filings, and the multilateration LMS licensees as a group have proposed a more appropriate alternative specification to the Commission.

The coalition of LMS licensees restates and reinforces the request which it has already made to the Commission to alter the emission mask specification.

Issuance of Refiled Multilateration LMS Licenses

The *Report and Order* required the existing multilateration LMS licensees to refile for their existing licenses in accordance with the provisions of the new rules. The refiled licenses were required to be submitted to the Commission by April, 1995. To date, none of these refiled licenses have been issued by the Commission to the existing multilateration LMS licensees. Given the uncertainty that these licenses may be issued, or the terms under which they may be issued, existing licensees can not prudently incur the cost of acquiring sites for multilateration LMS stations with confidence that the site will be allowed under license. The lead times required to negotiate the final terms of site leases and to execute those leases has now impaired the ability of the multilateration LMS licensees to fulfill the grandfathering of their licenses.

The Commission must move with every expediency to issue refiled licenses, thereby providing license holders a fair opportunity to realize their value.

Relocation of Grandfathered Multilateration LMS Stations

The *Report and Order* originally provided grandfathered licensees the ability to relocate their grandfathered multilateration LMS base stations by no more than 2 kilometers. This specification is unnecessarily restrictive and does not allow multilateration LMS licensees sufficient flexibility to adapt to the availability of, and competition for, appropriate sites around the original sites. In addition, there is no public policy justification for treating the relocation of grandfathered multilateration LMS stations in the same restrictive manner as the sites of exclusive licensees who must not interfere with co-channel licensees in adjacent geographic areas. The inappropriateness of the originally specified relocation limit has been explained to the Commission in several *ex parte* presentations and filings, and the multilateration LMS licensees as a group have proposed a more appropriate alternative specification to the Commission.

Moreover, the continuing delay in issuing the refiled licenses, and in enabling the licensees to undertake the obligation of leasing a multilateration LMS station site with the confidence that the expense will not be in vain, may already be impairing the ability of existing licensees to acquire the refiled sites because changing conditions may have made them unavailable during the extended delay in issuing the refiled licenses. This compounds the need for added flexibility in obtaining alternative sites.

The coalition of LMS licensees restates and reinforces the proposal which they have already made to the Commission to provide more flexibility in their allowance to relocate existing or pending base station sites.

Grandfathering Deadline

The *Report and Order* was originally issued in February, 1995, and specified that the existing licenses of multilateration LMS licensees must be grandfathered by April 1, 1996. At that time, under the normal schedules which the Commission has customarily employed, the Commission should have been expected to conclude the Comment and Reply Comment periods and to issue its Final Rules in the Docket in June, 1995. The Commission obviously believed that nine months from the expected issuance of the Final Rules in the Docket would be an adequate period to allow the multilateration LMS licensees to fulfill the requirements for grandfathering their existing licenses. In fact, the multilateration LMS licensees appear to have also believed that the Commission's schedule was fair and equitable, since none of the licensees requested an extension of this deadline in their Comments or Reply Comments .

Several items in the *Report and Order*, however, were either inequitable, inappropriate or ambiguous, and required clarification or correction, as noted in the Comments and Reply Comments by the multilateration LMS licensees. These clarifications and corrections have been expected to be addressed in the Final Rules. More importantly, these clarifications and corrections are a necessary precondition for the multilateration LMS licensees to be able to take the appropriate actions required for grandfathering their existing licensees.

The delay in issuing the Final Rules on the emission mask, in particular, has jeopardized the ability of the multilateration LMS licensees to grandfather their existing licenses as originally intended and provided for in the *Report and Order*. Without this important specification being completely and finally defined, multilateration LMS licensees can not complete the design and commit to the production of the equipment required to grandfather their licenses. Until the final form of the emission mask specification is known, existing licensees can not prudently invest the considerable funds necessary to produce equipment with confidence that the equipment will not have to be significantly altered or even scrapped once the Commission has finally acted. Given the lead times which all licensees face in the manufacturing cycles for the equipment needed for

grandfathering their licenses, the Commission's delay has now made it impossible for the multilateration LMS licensees to fulfill the grandfathering of their licenses by April 1, 1996, as specified in the *Report and Order*.

Consequently, the coalition of multilateration LMS licensees strongly requests that the Commission reset the date by which existing licensees must fulfill the specified requirements for grandfathering their LMS stations. The Commission should abide by the intent and the expectations of the original *Report and Order*, under which the deadline for grandfathering existing LMS licenses would be 9 months following the issuance of the Final Rules for Location and Monitoring Services. Given the significant and unexpected delay which has occurred in the issuance of the Final Rules, the Commission should set the new date by which existing licensees must fulfill the requirements for grandfathering their licenses to be 9 months from the date of the issuance of the Final Rules.

LMS Equipment Certification

The *Report and Order* currently specifies that base station and mobile equipment which is intended to operate under a multilateration LMS license must be type accepted by April 1, 1996 (for LMS Systems constructed after February 3, 1995, and for all equipment placed into service after April 1, 1996). In their August 22, 1995, letter to the Commission, the members of the LMS Coalition requested that the effective date for requiring type acceptance be extended to a date 12 months after any rules on reconsideration concerning the emission mask, and that all LMS equipment manufactured prior to the date of effectiveness be exempted in general from type acceptance.

In light of the delay in defining a revised emission mask, the coalition of multilateration LMS licensees reiterates the position expressed in the letter of August 22, 1995, that a new date for requiring type acceptance be set once the final rule for the emission mask is issued. The extension of the effective date for type acceptance should be set to allow the existing LMS licensees a reasonable time to comply with the regulation, as originally intended in the *Report and Order*. In addition, the need for formal compliance with type acceptance should not be set at a date which does not reasonably permit the existing LMS licensees to manufacture and deploy their equipment to grandfather their licenses. Extending the effective date for type acceptance to 12 months following the rule on reconsideration of the specification for the emission mask will allow existing LMS licensees a reasonable time frame in which to complete construction of their systems and to comply with the type acceptance rules.

Procedures and Schedules For LMS Auctions

While the *Report and Order* indicated that LMS licenses would be awarded in an auction, it does not specify a date or procedure for those auctions. Auctions must follow resolution of grandfathering to provide a defined and unambiguous environment for auction participants. Grandfathering should not be considered to be resolved until after all deployment, testing, certification, or other requirements are fulfilled and the FCC converts the grandfathered licenses into permanent operating authority.

Until this time, auction participants, potentially including many or all of the grandfathered licensees, will be unable to properly evaluate the value of the spectrum to be auctioned and devise a rational bidding strategy.

Co-Channel Interference With Part 15 Devices

The *Report and Order* so dramatically increases the interference protection to and allowance of interference from Part 15 devices relative to LMS systems that it effectively reverses the hierarchy. At the same time, the *Report and Order* states that it is not the Commission's intent

create such a reversal. The Commission must clarify its statements to remove apparent contradiction and ambiguity in order to bring the wording in line with the obvious intent.

In particular, the *Report and Order* states that each LMS system must prove that it does not create unacceptable interference to Part 15 devices as a precondition to beginning service. This ambiguous requirement leaves unspecified the definition of unacceptable interference, the intended universe of Part 15 devices, and the procedure and participants involved in determining whether or not an LMS system is in conformance. Note that as written, this rule requires LMS operators to prove that they don't create unacceptable interference to a potentially unlimited group. This negative proof would be virtually impossible to satisfy even under perfect conditions. Further, this requirement is clearly intended to apply to systems deployed by auction winners, but it is less certain if this or any other interference requirement applies to grandfathered systems.

The Commission should rewrite this requirement to clarify its scope and thereby provide a concrete guide to LMS operators working to deploy systems. The clarified requirement should state that the burden of proof that an LMS system causes unacceptable interference falls on the Part 15 device operator or manufacturer and this claim must be rebuttable by the LMS operator. In addition, it must exclude grandfathered systems. The grandfathering timeline, even without the current delays, provides absolutely no allowance for defining and conducting interference tests, let alone time for system redesign should the system be found to be non-conforming.

The *Report and Order* also defines a standard by which Part 15 devices will be assumed a priori to be incapable of causing harmful interference to LMS systems, regardless of the actual experience of the LMS operator. The LMS community understands and supports the Commission's intent to simplify enforcement through such a ruling. In an environment of full cooperation and perfect intentions such a standard would be sufficient. Unfortunately, the actual environment has been one of less than full cooperation and the broad exclusion of this ruling exposes LMS systems to Part 15 devices or systems that, while meeting the letter of the rule, have been deployed negligently or maliciously to cause debilitating interference. The Commission should state that the Part 15 interference exclusion is not intended to protect such jamming operation and that LMS operators will have reasonable recourse against it.

LMS Permissible Uses

To meet their business and financing requirements, the current LMS licensees must be assured that the scope of allowable services, as defined in the current Rules, will remain in place for grandfathered systems. Specifically, the coalition is asking for reaffirmation that the scope and permissible uses defined in §90.353 will not be diminished in any way for grandfathered systems. Furthermore, if, in the course of preparation for the auctioning the sub-bands, the Commission allows additional uses, then these must be extended to the grandfathered systems.

Additional Sites Within Geographic Area of Operation By LMS Systems

The *Report and Order* allows existing LMS licensees to grandfather their licenses and to provide location and monitoring services to customers with their grandfathered systems. In this context, the existing licenses of each current LMS licensee implicitly define a geographic area in which the existing LMS licensee will provide services. The accuracy and quality of location and monitoring services provided by such systems will not be uniform and consistently high across the implicitly defined geographic area of operation due to topological features and other obstructions to signals. The inability to offer consistently high quality service across the area of operation could create dangerous communications failures in public safety, motorist emergency and other life safety applications, and could degrade the usability of the service in other commercial and consumer applications. In fact, the original licenses as filed with the Commission were not intended nor envisioned as the only resources with which the existing LMS licensee would provide consistently

high quality location and monitoring services within the implicitly defined geographic area of coverage. The existing LMS licensees filed their original licenses with the presumption that site locations could be modified or increased as necessary to provide consistently high quality service once the licensee gained experience with the operating system, as has been normal practice by the Commission with other licensed services. The provisions in the *Report and Order* to provide some limited flexibility in relocating licensed stations prior to the initiation of operation to fulfill the requirements for grandfathering the license does not provide the LMS licensee an adequate mechanism to assure the provision of consistently high quality service within its geographic area of operation.

The ability to fill in coverage areas defined by the grandfathered sites is necessary to offer a useful public service and to put grandfathered licensees in a sound competitive position. At the same time, filling in holes will not complicate sharing or increase interference problems since grandfathered licensees will already be operating over the vast bulk of the coverage area and will have had to reach satisfactory sharing agreements already.

The coalition of LMS licensees has long maintained the need for this flexibility and we reiterate it now.

The Commission need not fear that granting these requests will present the grandfathered licensees with an unintended opportunity to hoard spectrum or disrupt auctions. The costs involved in meeting the grandfathering requirements including site acquisition, deployment, and operation, are substantial. Any company intending to grandfather a significant number of areas primarily to hoard spectrum while only offering the minimally required commercial service will pay a massive sum to place this bet. Conversely, few, if any, grandfathered coverage areas are extensive enough to allow the grandfathering entity to successfully operate them commercially without needing to expand them at some point to fully serve their customers' needs. This can only be done by participating in the auctions.

The LMS community appreciates the efforts the Commission has exerted throughout this rulemaking to bring the benefits of LMS to the public while balancing the needs of the many and varied band occupants. We are eager to undertake the significant challenge associated with bringing this new service to market and urge the Commission to assist us by issuing Final Rules as quickly as possible. In doing so, we stridently request the Commission to fully consider the serious negative impact the current delay has had on the intent of many of the provisions contained in the *Report and Order* and include in the final rules offsetting remedies as presented in this letter.

Respectfully,

The Coalition of LMS Licensees

Respectfully yours,

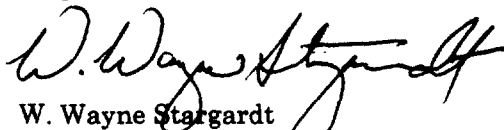
UNIPLEX CORPORATION

A handwritten signature in cursive script, appearing to read "McNeil Bryan".

McNeil Bryan
President

Respectfully submitted,

Pinpoint Communications, Inc.

A handwritten signature in cursive script, appearing to read "W. Wayne Stargardt".

W. Wayne Stargardt
Vice President, Marketing

Respectfully submitted,

MobileVision, L.P.

A handwritten signature in cursive script, appearing to read "R. Gray (419)".

Rod Gray
President

CERTIFICATE OF SERVICE

I, John J. McDonnell, hereby certify that copies of the foregoing **Ex Parte** filing were forwarded this 17th day of January, 1996 by U.S. first-class mail to the following individuals:

- * Chairman Reed E. Hundt
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Washington, D.C. 20554
- * Commissioner Andrew C. Barrett
Federal Communications Commission
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- * Commissioner Rachelle B. Chong
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John V. McDonnell

* Indicates hand delivered